

### **Remarks/Arguments**

Applicants respectfully request favorable reconsideration of the subject application, particularly in view of the above amendment and the following remarks. Applicants respectfully urge that there is no additional fee for this amendment as the number of independent claims and the total number of claims remain unchanged.

Applicants have amended Claims 1, 10 and 17 to provide that the anode of the fuel cell is impregnated with a metal-containing salt solution comprising an electron-conducting metal having an oxide form that melts at a temperature of less than about 1550°C. Support for this amendment can be found at Page 2, line 28 to Page 3, line 9 of the specification which describes the claimed method for producing an anode, the result of which is an anode comprising a highly porous YSZ layer and a metal resulting from impregnation of a metal-containing salt solution. The description further states that suitable metals for use in such an anode are metals whose oxides have a low melting temperature. The object of the method of the invention claimed in the subject application is to enable the use of electron-conducting metals, the oxides of which would melt at the high temperatures required for calcination of the YSZ layer of the anode. A suitable temperature for calcination of the YSZ layer is indicated at Page 5, lines 8-9 to be 1550°C. Thus, it is clear that the application is directed to anodes comprising a porous YSZ layer and an electron-

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conducting metal having an oxide form which melts at a temperature less than the calcination temperature of the YSZ layer, that is less than about 1550°C. Accordingly, Applicants respectfully urge that this amendment is fully supported by the application as originally filed and, thus, incorporates no new subject matter into the application.

Applicants have also amended Claim 11 to depend from Claim 10 as the claim from which Claim 11 originally depended was cancelled from the subject application during the international phase.

Applicants also note that the claims were renumbered by the Examiner whereby previously pending claims 4-11, 13-15, 17-21 and 23-24 have been renumbered consecutively from 3-20. Accordingly, Applicants have identified the renumbered claims in accordance with the new rules for amendments as being “previously presented” rather than as “original”.

The Examiner has indicated that the information disclosure statement submitted on 07 January 2002 contained pages 2-6, which appeared to be relevant to application Serial No. 09/216,324 rather than the instant case, as a result of which only the first page of the information disclosure statement was initialed by the Examiner. Applicants note that, in fact, pages 2-6 incorrectly cited Serial No. 09/261,324 and not Serial No. 09/216,324 as indicated by the Examiner. Applicants

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also wish to call to the attention of the Examiner that all of the references cited in the previously filed information disclosure statement were, in fact, considered in the parent application to the subject application, which parent application has Serial No. 09/261,324. Applicants note that although pages 2-6 incorrectly cited Serial No. 09/261,324 as the relevant application, pursuant to MPEP § 609 I. A. 2, Applicants are not required to submit an information disclosure statement in order to obtain consideration of the prior art references cited and considered in the parent application to a continuation-in-part application. As the subject application is a continuation-in-part application of application Serial No. 09/261,324 as indicated on the cover sheet of the application as originally filed, Applicants presume that the references listed on pages 2-6 of the previously filed information disclosure statement, which references were all considered in connection with prosecution of the parent application to the subject application, will be considered by the Examiner in accordance with MPEP § 609 I. A. 2. without the resubmission of the references cited in the previously filed information disclosure statement. If Applicants' presumption is incorrect, Applicants respectfully request that the Examiner contact the undersigned.

Claims 1-12 of the subject application have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-14 of co-pending Application No. US 2001/0029231 A1

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(which corresponds to application Serial No. 09/864,788). In response to this rejection, Applicants are submitting a Terminal Disclaimer disclaiming any portion of the term of any patent issuing from the subject application which extends beyond the term of any patent which may be granted from Application No. US 2001/0029231. Applicants respectfully urge that the filing of this Terminal Disclaimer overcomes this rejection.

Claims 13-20 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-11 of U.S. Patent No. 6,589,680 B1. In response to this rejection, Applicants are submitting a Terminal Disclaimer disclaiming any portion of the term of any patent issuing from the subject application which extends beyond the term of said U.S. patent. Applicants respectfully urge that the filing of this Terminal Disclaimer overcomes this rejection.

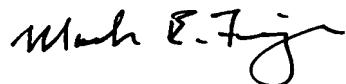
### **Conclusion**

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants urge the Examiner to contact the undersigned.

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Applicants sincerely believe that this patent application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,



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